

STATE OF MICHIGAN
COURT OF APPEALS

GOWON YOUNGER, DOINNIE RAE
YOUNGER, RYAN YOUNGER, and
MAGNOLIA YOUNGER,

UNPUBLISHED
March 10, 2005

Plaintiffs-Appellants,

v

No. 250845
Genesee Circuit Court
LC No. 02-073745-NO

CITY OF FLINT,

Defendant,

and

MICHAEL DIMMICK, CLAUDETTE
HAIRSTON, and MONICA BULLOCK,

Defendants-Appellees.

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the circuit court's order granting summary disposition to the individual defendants.¹ We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This case arises from a domestic disturbance in early July, 2002. James Younger became enraged and began threatening the rest of the household with a knife. Eventually, he went outside with plaintiff Doinnie Rae Younger, where James began throwing things at the house. Plaintiff Gowon Younger retrieved a gun and shot James dead. Criminal charges against Gowon in the matter were filed but were eventually dropped.

¹ Plaintiffs do not challenge the dismissal of defendant city of Flint, who accordingly is not participating in this appeal. For convenience, references to "defendants" in this opinion will refer exclusively to the three involved in this appeal.

During the fracas, members of the household placed several 911 calls, which were received by defendants Michael Dimmick and Claudette Hairston, who relayed information to a dispatcher, defendant Monica Bullock. Plaintiffs contend that defendants committed gross negligence in handling the 911 calls, allowing the situation to escalate to where plaintiffs ended up suffering severe emotional injuries stemming from the homicide in their family.

The trial court granted defendants' motion for summary disposition on the ground of governmental immunity, concluding that plaintiffs had failed to offer evidence to show that any of them acted with gross negligence. The court additionally opined that the failure to send the police was not the proximate cause of the underlying incident.²

On appeal, plaintiffs argue that a jury issue existed concerning whether each of the individual defendants was grossly negligent in handling the 911 calls. We need not reach that issue, however, because we conclude that the trial court correctly concluded that plaintiffs failed to present evidence to support the conclusion that the action or inaction of defendants was the proximate cause of the homicide.

A motion for summary disposition based on governmental immunity is decided by examining all documentary evidence submitted by the parties, accepting all well-pleaded allegations as true, and construing all evidence and pleadings in the light most favorable to the nonmoving party. *Tarlea v Crabtree*, 263 Mich App 80, 87; 687 NW2d 333 (2004). Review is de novo. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999).

MCL 691.1407(2) provides that every "officer and employee of a governmental agency . . . is immune from tort liability for an injury to a person . . . caused by the officer [or] employee . . . while in the course of employment or service" Subsection (2)(c), however, establishes an exception where the state agent's conduct constitutes "gross negligence that is the proximate cause of the injury or damage."

Our Supreme Court has noted that the above statute says "the proximate cause," not "a proximate cause," and thus determined that governmental officers are liable only when their gross negligence is "the one most immediate, efficient, and direct cause of the injury or damage" *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000).

In *Dean v Childs*, 262 Mich App 48; 684 NW2d 894 (2004), this Court, citing *Robinson*, held that where an arsonist starts a house fire, then grossly negligent fire-fighting management destroys the opportunity to rescue children who were trapped inside, the latter constitutes *the* proximate cause of the children's deaths: "While it is likely that the arsonist was 'a proximate cause' of the children's deaths, plaintiff's evidence, if proven, would show that the children

² Plaintiffs protest that the trial court failed to address the question of proximate causation, and urge this Court not to consider that facet of the case. However, the court did in fact state, "I don't believe that the proximate cause of this incident was the fact of the failure of the police to get there." Review of that aspect of the decision is thus appropriate.

would have survived the fire if [the defendant] had not acted in a grossly negligent manner.” *Id.* at 58.

Dean is distinguishable from the instant case, because in *Dean*, although the alleged arsonist started the fatal fire, it was the firefighters who failed to take advantage of, and in fact destroyed, the last clear chance to rescue the children. In this case, it was plaintiff Gowon Younger who had the last chance to decline to shoot James Younger, or the latter himself who had the last chance to refrain from provoking any such defensive measure, or some combination of the two. While each of the individual defendants, through his or her errors in handling the 911 calls, may have been *a* proximate cause of the emotional trauma stemming from the familial homicide, it was the family member or members responsible for the final escalation of aggression who constituted *the* proximate cause of those injuries.

For these reasons, we conclude that the trial court correctly granted defendants’ motion for summary disposition.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O’Connell